

comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provision of § 101.41 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 101.41, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding.

(d) Dismissal for failure to prosecute or for failure to respond to official correspondence or requests for additional information within a specified time period will be without prejudice prior to its designation for hearing, or tentative selection by the random selection process. Dismissal may be with prejudice after selection of the comparative evaluation process, or after selection as a tentative selectee in a random selection proceeding.

**§ 101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.**

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications must comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)), or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which

would thereby permit the grant without hearing, comparative evaluation under § 101.51, or random selection of an application previously in contested status.

(b) The provisions of this section will not be applicable to any engineering agreement (or understanding) that:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section will constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section must comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto must jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto must file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission must be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best

of their knowledge and belief, and are made in good faith; and

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs may include only directly assignable costs and must exclude general overhead expenses. (The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.) An itemized accounting must be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars (\$1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting must clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

**§ 101.43 Opposition to applications.**

(a) Any party in interest may file with the Commission a petition to

deny any application for which public notice is required. All such petitions must:

(1) Identify the application or applications including applicant's name, station location, Commission file numbers and radio service involved with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of this part and part 1 of this chapter;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), supported by affidavit of a person or persons with personal knowledge thereof and be sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience and necessity;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of such applications or major amendments thereto, or, identifying the tentative selectee of a random selection proceeding (unless the Commission otherwise extends the deadline); and

(5) Contain a certificate of service showing that the applicant has been mailed a copy of the petition no later than the date on which the petition is filed with the Commission.

(b) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof must be supported by an affidavit of a person or persons with personal knowledge thereof and be clearly identified. The applicant must serve a copy of the opposition on the petitioner, and the petitioner must serve a copy of its reply on the applicant. The time for filing such oppositions and replies are provided in § 1.45 of this chapter.

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. The Commission will consider informal objections, but not necessarily discuss them in a written opinion, if the objection is filed at least one day prior to action on the application